

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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2-1-85

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FILE: B-216359

DATE: March 5, 1985

MATTER OF: Edward J. Reed - Overtime Compensation

DIGEST:

1. A former employee claims entitlement to overtime compensation for the period January 1, 1970, through December 31, 1974. The claim was received in the General Accounting Office (GAO) on August 9, 1977. Since 31 U.S.C. § 3702(b)(1) (1982) bars consideration of a claim presented to the GAO more than 6 years after the date the claim accrued, that portion of the claim arising before August 9, 1971, is barred and may not be considered on its merits.
2. A former employee claims entitlement to overtime compensation for the period January 1, 1970, through December 31, 1974. The claim, which was received in the General Accounting Office on August 9, 1977, is not barred from consideration for the period after August 9, 1971. However, the earlier disallowance of that claim is sustained. Where Government records necessary to either justify or refute a claim are unavailable, the burden of proof is on the claimant to provide proof of entitlement. Since the claimant has not furnished any documentation of his entitlement, we have no alternative but to sustain that disallowance. Sherwood T. Rodrigues, B-214533, July 23, 1984.

This decision is in response to a letter from Mr. Edward J. Reed, appealing settlement Z-2769295, November 15, 1978, by our Claims Division, which disallowed his claim for overtime compensation for the period January 1, 1970, through December 31, 1974.

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That disallowance was based, in part, on the provisions of the barring act, 31 U.S.C. § 3702(b) (1982) (formerly 31 U.S.C. § 71a), and, in part, on the fact that Mr. Reed's employing agency had no record that he performed any officially authorized or approved overtime. For the reasons stated below, we sustain the disallowance of Mr. Reed's claim.

Mr. Reed has not specifically stated in his letter the basis for contending that the Claims Division settlement of November 15, 1978, is erroneous. He asserts only that all documents which support his entitlement were filed monthly with the Oklahoma City, Oklahoma, office of his employing agency, the Department of Housing and Urban Development.

Preliminarily, we concur with the earlier finding that Mr. Reed's claim is divisible into two parts. The first part is for all overtime claimed to have been performed prior to August 9, 1971, and the second part is for all overtime claimed to have been performed on or after that date.

Under 31 U.S.C. § 3702(b)(1) (1982) a claim against the Government must be received here within 6 years of the date that claim first accrued. We have held that timely receipt of a claim here constitutes a condition precedent to a claimant's right to have that claim considered on its merits. Furthermore, the filing of such claim with any other Government agency does not satisfy the requirements imposed by this provision. Frederick C. Welch, 62 Comp. Gen. 80 (1982). We have also held that a backpay claim accrues on the date the services were rendered and on a daily basis for each day services are rendered thereafter. 29 Comp. Gen. 517 (1950); and Burke and Mole, 62 Comp. Gen. 275 (1983).

Our file shows that the earliest correspondence received in this Office from Mr. Reed concerning his overtime pay claim was received here on August 9, 1977. Therefore, any claim which he had for unpaid overtime compensation which arose prior to August 9, 1971, is forever barred from consideration. The action of our Claims Division barring that part of the claim is sustained. However, Mr. Reed's overtime compensation claim for the period August 9, 1971, through December 31, 1974, is not barred, and may be considered on its merits.

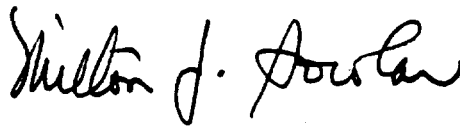
Section 5542(a) of Title 5, United States Code, authorizes, generally, the payment of overtime compensation for hours of work officially ordered or approved which are in excess of 40 hours in an administrative workweek or in excess of 8 hours in a workday. Thus, we must determine whether the overtime claimed was officially ordered or approved and whether documentation exists demonstrating when the number of hours of overtime claimed were performed. Mr. Reed has asserted that he was authorized to perform overtime and that such overtime was approved and documented on his travel vouchers which were submitted each month. In support of those assertions, the only material he submitted here was a list of dates and hours of overtime, which he prepared.

The burden of proving the existence of a valid claim against the United States is on the person asserting that claim. 4 C.F.R. § 31.7 (1984). Notwithstanding that burden, since such proof often can be found in Government records, upon presentation of a timely claim here, we attempt to secure those records in order to insure to the maximum extent possible that such entitlement as a claimant may have, is protected. However, where records necessary to establish or refute a claim are unavailable and the claimant, in turn, has failed to provide proof of entitlement, we have no alternative but to disallow the claim. Sherwood T. Rodrigues, B-214533, July 23, 1984.

In the present case, following receipt of Mr. Reed's claim in our Claims Division in 1977, we wrote to the Department of Housing and Urban Development in an effort to secure the documents and records they had regarding his claim. By letter dated April 24, 1978, from that agency's Director, Personnel Systems and Payroll Division, we were advised that they had no records which showed that overtime was approved or directed in Mr. Reed's case, or that he performed overtime hours during the period in question. In addition, the agency reported that Mr. Reed's time and attendance records reflected only that he worked regular hours during that period.

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Accordingly, Mr. Reed has not met the burden of proving the validity of his claim, and the action taken by our Claims Division, disallowing Mr. Reed's claim for the period August 9, 1971, through December 31, 1974, is also sustained.

for 
Comptroller General
of the United States